

Regular Session, 2009

SENATE BILL NO. 199

BY SENATOR RISER

TAX/TAXATION. Removes the Jan. 1, 2010, termination date for issuance of digital interactive media producer tax rebates, and increases the rate of the rebate for the first through the sixth year after certification to 20% of base investment. (gov sig)

AN ACT

To amend and reenact R.S. 47:6022(C)(8), (D), (E), (F), (G), and (I) and to repeal R.S. 47:6022(J), relative to tax credits; to change the digital interactive media producer tax credit to a rebate; to remove certain limitations for issuance of the tax rebate; to provide for the amount of the tax rebate for certain years; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6022(C)(8), (D), (E), (F), (G), and (I) are hereby amended and reenacted to read as follows:

§6022. Digital interactive media producer tax ~~credit~~ **rebate**

\* \* \*

C. Definitions. For the purposes of this Section:

\* \* \*

(8) "Tax ~~credit~~ **rebate**" means the digital interactive media producer tax credit authorized by this Section.

D. Producer tax ~~credit~~ **rebate**; specific projects. For ~~projects certified prior to January 1, 2010~~ **certified projects**, there is hereby authorized a tax ~~credit~~ **rebate**

1 against state income tax which shall be earned by producers at the time funds are  
2 expended in Louisiana on a state-certified production as follows:

3 (1) For each of the first ~~and second~~ **through sixth** years following  
4 certification of the project as a state-certified production, the producer shall earn tax  
5 ~~credits~~ **rebates** at the rate of twenty percent of the base investment for that year.

6 (2) ~~For each of the third and fourth years following certification of the~~  
7 ~~project as a state-certified production, the producer shall earn tax credits at the rate~~  
8 ~~of fifteen percent of the base investment for that year.~~

9 (3) ~~For each of the fifth and sixth years following certification of the project~~  
10 ~~as a state-certified production, the producer shall earn tax credits at the rate of ten~~  
11 ~~percent of the base investment for that year.~~

12 (4) No tax ~~credits~~ **rebates** may be earned under this Section after the sixth  
13 year following the certification of the project as a state-certified production.

14 (5) ~~The credit shall be allowed against the income tax due from a taxpayer~~  
15 ~~for the taxable period in which the credit is earned as well as the immediately~~  
16 ~~preceding period. If the tax credit allowed pursuant to this Section exceeds the~~  
17 ~~amount of such taxes due from a taxpayer, then any unused credit may be carried~~  
18 ~~forward by the taxpayer as a credit against subsequent tax liability for a period not~~  
19 ~~to exceed ten years. However, in no event shall the amount of the tax credit applied~~  
20 ~~by a taxpayer in a taxable period exceed the amount of such taxes due from the~~  
21 ~~taxpayer for that taxable period.~~

22 (6) ~~Application of the credit.~~

23 (a) ~~All entities taxed as corporations for Louisiana income tax purposes shall~~  
24 ~~claim any credit allowed under this Section on their corporation income tax return.~~

25 (b) ~~Individuals shall claim any credit allowed under this Section on their~~  
26 ~~individual income tax return.~~

27 (c) ~~Entities not taxed as corporations shall claim any credit allowed under this~~  
28 ~~Section on the returns of the partners or members as follows:~~

29 (i) ~~Corporate partners or members shall claim their share of the credit on their~~

1 corporation income tax returns.

2 (ii) ~~Individual partners or members shall claim their share of the credit on~~  
3 ~~their individual income tax returns.~~

4 (iii) ~~Partners or members that are estates or trusts shall claim their share of~~  
5 ~~the credit on their fiduciary income tax returns.~~

6 (7) ~~Transferability of the credit. Any tax credits allocated to a person and not~~  
7 ~~previously claimed by any taxpayer against his income tax may be transferred or sold~~  
8 ~~by such person to another Louisiana taxpayer, subject to the following conditions:~~

9 (a) ~~A single transfer or sale may involve one or more transferees. The~~  
10 ~~transferee of the tax credits may transfer or sell such tax credits subject to the~~  
11 ~~conditions of this Section.~~

12 (b) ~~Transferors and transferees shall submit to the director in writing, a~~  
13 ~~notification of any transfer or sale of tax credits within thirty days after the transfer~~  
14 ~~or sale of such tax credits. The notification shall include the transferor's tax credit~~  
15 ~~balance prior to transfer, the state-certified production number, the name of the state-~~  
16 ~~certified production, the transferor's remaining tax credit balance after transfer, all~~  
17 ~~tax identification numbers for both transferor and transferee, the date of transfer, the~~  
18 ~~amount transferred, a copy of the credit certificate, and any other information~~  
19 ~~required by the director or the department.~~

20 (c) ~~Failure to comply with this Paragraph will result in the disallowance of~~  
21 ~~the tax credit until the taxpayers are in full compliance.~~

22 (d) ~~The transfer or sale of this credit does not extend the time in which the~~  
23 ~~credit can be used. The carry forward period for credit that is transferred or sold~~  
24 ~~begins on the date on which the credit was originally earned.~~

25 (8) ~~The transferee shall apply such credits in the same manner and against the~~  
26 ~~same taxes as the taxpayer originally awarded the credit.~~

27 (3) After certification, the Louisiana Department of Economic  
28 Development shall submit a tax rebate certification letter to the Department of  
29 Revenue on behalf of the investor who earned the digital interactive media tax

1        rebate. The Department of Revenue may require the investor to submit  
2        additional information as may be necessary to administer the provisions of this  
3        Section. Upon receipt of the tax rebate certification letter and any necessary  
4        additional information, the secretary of the Department of Revenue shall make  
5        payment to the investor in the amount to which he is entitled from the current  
6        collections of the taxes collected pursuant to Chapter 1 of Subtitle II of this  
7        Title, as amended.

8                ~~(9)(a)~~(4)(a) Any producer who has received the tax ~~credit~~ **rebate** shall  
9        commit to continue business operations in this state for at least one year after the  
10       certification of any tax ~~credit~~ **rebate** pursuant to this Section.

11                (b) For purposes of this Paragraph, "continue business operations in this  
12       state" means that a producer's base investment in the year following certification of  
13       any tax ~~credit~~ **rebate** is at least twenty-five percent of the amount of the previous  
14       year's base investment.

15                (c) If a producer who has received the tax ~~credit~~ **rebate** should not continue  
16       business operations in this state for one year after certification of any tax ~~credit~~  
17       **rebate** pursuant to this Section, the producer shall either:

18                (i) Surrender all ~~credits~~ **rebates** earned within one year of the date the  
19       producer does not continue business operations in this state.

20                (ii) Pay back to the department an amount equal to the face value of all  
21       ~~credits~~ **rebates** earned within one year of the date the producer does not continue  
22       business operations in this state.

23                E. Certification and administration. (1) The director shall determine through  
24       the promulgation of rules (a) what projects qualify for state-certified productions and  
25       (b) any other matter necessary to carry out the intent and purposes of this Section.  
26       These rules shall not be adopted until they are approved by the House Committee on  
27       Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

28                (2)(a) The director shall submit his initial certification of a project as a state-  
29       certified production to each producer and to the secretary. The initial certification

1 shall include a unique identifying number for each state-certified production.

2 (b) Upon completion of all or a portion of a state-certified production, the  
3 director shall review the production expenses and, if approved, issue a ~~credit~~ **rebate**  
4 certification letter to the producer. The certification letter shall include the  
5 identifying number assigned to that state-certified production in the initial  
6 certification. Written approval of the secretary of the Department of Economic  
7 Development and the commissioner of administration shall be received prior to  
8 issuance of a ~~credit~~ **rebate** certification letter.

9 (3) Any taxpayer applying for the ~~credit~~ **rebate** shall be required to reimburse  
10 the department for any audits required in relation to granting the ~~credit~~ **rebate**.

11 F. Recapture of ~~credits~~ **rebates**. If the director finds that funds for which a  
12 producer received ~~credits~~ **rebates** according to this Section are not actually expended  
13 in this state as a production-related cost of a state-certified production, then the  
14 producer's state income tax for such taxable period shall be increased by such  
15 amount necessary for the recapture of ~~credit~~ **rebates** provided by this Section.

16 G. Recovery of ~~credits~~ **rebates** by department. (1) ~~Credits~~ **Rebates**  
17 previously granted to a taxpayer, but later disallowed, may be recovered by the  
18 secretary through any collection remedy authorized by R.S. 47:1561 and initiated  
19 within three years from December thirty-first of the year in which the ~~credits~~ **rebates**  
20 were ~~earned~~ **granted**.

21 (2) The only interest that may be assessed and collected on recovered ~~credits~~  
22 **rebates** is interest at a rate of three percentage points above the rate provided in R.S.  
23 9:3500(B)(1), which shall be computed from the original due date of the return on  
24 which the ~~credit~~ **rebate** was ~~taken~~ **granted**.

25 (3) The provisions of this Subsection are in addition to and shall not limit the  
26 authority of the secretary to assess or to collect under any other provision of law.

27 \* \* \*

28 I. ~~The provisions of this Section shall be effective until January 1, 2010.~~

29 J. Any producer who earns tax ~~credits~~ **rebates** under this Section shall

pledge to continue business operations in the state of Louisiana until such time as such producer can demonstrate to the director that the net positive fiscal impact to the state resulting from such producer's operations in connection with the state-certified production has met or exceeded the value of any tax ~~credits~~ **rebates** issued under this Section.

Section 2. R.S. 47:6022(J) is hereby repealed in its entirety.

Section 3. The provisions of this Act shall be applicable to projects certified on and after the effective date of this Act.

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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The original instrument was prepared by Riley Boudreaux. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nancy Vicknair.

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#### DIGEST

Riser (SB 199)

Present law authorizes a tax credit for projects certified prior to Jan. 1, 2010, against state income tax earned by producers at the time funds are expended in La. on a state-certified production as follows:

- (1) For the first and second years following certification of the project, the producer shall earn a tax credit of 20% of the base investment for that year.
- (2) For the third and fourth years following certification of the project, the producer shall earn a tax credit of 15% of the base investment for that year.
- (3) For the fifth and sixth years following certification of the project, the producer shall earn a tax credit of 10% of the base investment for that year.
- (4) No tax credits may be earned after the sixth year following the certification of the project.

Proposed law changes digital interactive media producer tax credit to a tax rebate.

Proposed law removes the termination date of Jan. 1, 2010 in present law for issuance of tax rebates on state-certified productions and provides for projects certified on and after its effective date.

Proposed law changes present law to provide that an investor shall earn a tax rebate of 20% of the base investment in the first through sixth years following certification of the project.

Present law provides for the application for tax credits, the certification and administration of the tax credit, and the transferability, recovery, and recapture of the tax credits.

Proposed law retains present law and further provides that after certification, the Dept. of Economic Development shall submit a tax rebate certification letter to the Dept. of Revenue on behalf of the investor who earned the digital interactive media tax rebate. The Dept. of Revenue may require the investor to submit additional information and upon receipt of the tax rebate certification letter and any such necessary information, the secretary shall make payment to the investor in the amount he is entitled to receive from the current collections of taxes collected pursuant to Chapter 1 of Subtitle II of Title 47 of the Revised Statutes.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6022(C)(8), (D), (E), (F), (G), and (I); repeals R.S. 47:6022(J))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Changes digital interactive media producer tax credit to a tax rebate.
2. Provides that after certification, the Dept. of Economic Development shall submit a tax rebate certification letter to the Dept. of Revenue on behalf of the investor who earned the digital interactive media tax rebate. The Dept. of Revenue may require the investor to submit additional information and upon receipt of the tax rebate certification letter and any such necessary information, the secretary shall make payment to the investor in the amount he is entitled from the current collections of taxes collected pursuant to Chapter 1 of Subtitle II of Title 47 of the Revised Statutes.

##### Senate Floor Amendments to engrossed bill.

1. Makes technical changes.